

## The Significance of Religion

Review of: John Adenitire *A General Right to Conscientious Exemption: Beyond Religious Privilege* (Cambridge University Press, 2020)

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When one thinks about the significance of religious and non-religious claims, it helps to reflect on how these claims differ. One approach, contained in much of John Adenitire's book, is to see these claims as not basically different. I believe things are more complicated, as I will explain here. What follows, concerns an overall impression of the book rather than the content of particular chapters.

Two key questions are what counts as religion and whether non-religious claims should be treated equally with religious ones. Much of Adenitire's book sees nothing special about religious claims, and this becomes an obvious basis for equal treatment.

At least in the Anglican culture, religion has typically been conceived as involving conceptions and practices of a relation with God and/or spiritual forces that reach beyond ordinary human relations. This understanding affects both how religious claims and related claims should be treated.

Let us start with the religious claims themselves. In a liberal-democratic culture, there is a recognition that in general people should be free to believe and worship as they choose. This leads to freedom of religious exercise, and it is a solid basis for concessions. If those within a particular religion believe that God is opposed to what the secular law requires, we have two bases to allow them to conform. The fundamental idea is that people should not be forced to act contrary to what they take as God's will. Related to this point is that for many matters, if such force exists, it may impair the practice itself. To take an obvious example, religious pacifists should not be drafted into military service. If they are drafted, that may offend both their consciences and lower the effective capacity of the military.

If we think of religious convictions in this way, that raises the questions about how non-religious convictions should be treated. One conceivable possibility is that no such concessions should be made. If a concession is made to those who think God wants contrary behavior, perhaps no similar treatment should be granted to those who are relying on simple ethical and political judgments. An alternative is that a similar concession should be made, either because the ethical judgments don't seem really different from the religious ones, or because drawing the line in practice seems unfair or unwise or both.

Contrary to much of the assumption of Adenitire's book, I do not assume that the fundamental judgments are almost always the same. If a religious judgment is based on what one takes as the content of a religious source, such as the Bible, that can be quite

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different from ordinary ethical reasoning. I do not want to overstate this point. Much in the Bible is not completely clear, so one element of interpretation is bringing to bear what ordinary reasoning might tell one would be sound.

A second point concerns the relation between religious judgments and non-religious ethical judgments. For many matters, the religious judgments themselves may rest partly on independent ethical evaluations. Profound changes in dominant conceptions about the relations between males and females are virtually certain to affect how we take what the Bible tells us about relations between males and females. Nevertheless, religious judgments typically need not be reduced to ordinary ethical evaluation. Most obviously, we may have a religious text that contains fairly clear recommendations about what we should believe and how we should act.

How someone makes these judgments and acts upon them may involve reasoning that differs from ordinary ethical evaluation. One may think that reading the Bible or simply following stated church directions will suffice, making ordinary ethical and political reasoning unnecessary.

These points raise the question about how the state should respond.

The concession to religious judgments can rest partly on allowing people to carry out what they see as higher obligations. But if a concession is made on this basis, how should possible similar non-religious concessions be treated? This is an important question, one pretty much avoided by Adenitire's book, which generally does not treat religious claims as special.

Suppose one begins with the proposition that when someone belongs to a religious group that maintains a belief of what God wants on this earth, and this conflicts with what ordinary secular law has required in some way, a concession should often be granted. This general proposition leaves open important questions. One is how far what is granted to a group should depend on his or her membership. Should there be an in-depth inquiry into how far he or she actually agrees with the group position, or should it simply be assumed that a member does conform, at least in the absence of clear contrary evidence?

Other basic questions are how an evaluation should be made of competing concerns. Here we have both issues of whose assessments should be evaluated and how that should take place. If an individual seeking an exemption relies heavily upon membership – such as a pacifist religious group – should executive and judicial officials rely heavily on the group's doctrines or seek powerful evidence of what the individual actually believes? The best answers here may depend partly on the particular issue involved, and on whether there are good reasons to be uncertain of what counts as clear, decisive group doctrine, and on whether individual members virtually all subscribe to this doctrine. One might take the view that what really counts are personal convictions, and that whatever his membership, the key question for any individual claiming an exemption is what the individual believes, and how any of those beliefs count for him. We can see here a basic distinction between many traditional religious convictions and ordinary ethical, political assessments. With the traditional religious view, an individual may be claiming that God does not want him to act in a way that secular law requires. Although ordinary assessments may affect both what a religious organisation sees as needed, and how an individual member personally sees things, in some manner the perception of what God wants often does not depend on

ordinary analysis. Rather, what counts may depend heavily on what the Bible says or what are prevailing doctrines in the group of which an individual is a member. For example, a claimed pacifist may belong to a pacifist religious group, such as the Quakers.

All of this leads us to serious issues that Adenitire's book avoids in most of its chapters.

Are there special reasons for a liberal democratic state to concede to religious claims? If so, how should analogous non-religious claims be treated? Of course, for many things, people should not be compelled to do what they obviously believe is fundamentally wrong. We might conclude this about a vegetarian. If someone for whatever reason believes we should not be eating meat, it makes good sense to allow him to manage on other forms of food. But things become more complicated if we have general practices that benefit others directly or are good for society. Military service is an obvious example of this.

When we think about reasons for concessions, we can conceive some that are specially related to religions, but it does not necessarily follow that religious claims warrant special treatment. On the first point, if we think of religion as often involving beliefs about what God gives us and wants from us in response, it is easy to see that we have some special reasons for accommodation. If we think about secular law, perhaps it should not necessarily require that someone act contrary to what he perceives to be God's will.

Of course, just how this should be determined is complicated. Just how to discern the individual's position is hardly simple. Should group membership be very important, or should there be deep investigation into what the individual believes and how strong that belief is for him? How should people arrive at conclusions of what God intended for them and chooses to grant them? And are public officials and juries in a position to evaluate an individual's claimed assessment? One might think that these matters are so complicated that they should not be taken into account; but we still have the reality that if someone does believe that God wants us to act in a certain way, that is a reason to make a concession if others do not suffer as a consequence.

The appropriateness of a concession can depend partly on a balancing test. If others would clearly suffer from a concession, that is a strong reason not to grant one. Suppose someone honestly believes that violent actions against his wife are clearly warranted. That privilege would not be granted because of the harm it would cause the wife.

Just how to do the balancing test is far from simple. Should public officials focus on the particular likely consequences of accepting the behaviour on individual claims, or ask what would happen if a broader concession is made to those who choose to engage in the behaviour? The proper answer to this question may well depend partly on just what is involved. If the individual is doing something that is genuinely distinctive, one might focus on likely particular consequences, but if he is engaging in a general practice, what should matter is what that general practice is creating. Of course, one relevant question can be how far a concession may affect the welfare and behaviour of others. If a concession from ordinary law would allow someone to act in a way that is harmful to others, that is a powerful reason not to make the concession.

With a careful analysis of relevant cases, Adenitire considers those for concessions that should be made to forms of behaviour. One of his fundamental positions is to reject any distinction in how religious and non-religious claims should be treated.

His analysis of various cases and judicial opinions is thoughtful and careful. To be clear: even if one believes, as I have claimed, that religious claims may be special in certain ways, one may still believe that as far as secular law is concerned, religious claims should not warrant special treatment. One may conclude that equal treatment is called for between religious and non-religious claims. John Adenitire provides a careful and thorough analysis of relevant cases and statutes. One thing this analysis makes clear is that when it comes to statutory formulations and to executive and judicial constructions, what are taken as the relevant meanings do not necessarily fit what (made in March 2021) an ordinary sense of the language would convey. Sometimes legislators may have in mind objectives that are covered only by a stretch of general meaning, and with some frequency executive and judicial constructions involve stretches of this variety.

Adenitire also provides a thoughtful analysis of whether the Establishment Clause should be seen as limiting any preference for religious claims. If we turned to the original understanding, that was more limited. The government was not to endorse any particular religion as *the* religion of the state, in the sense that Roman Catholicism was the definite religion of some countries and the Episcopalian religion had an official status in England. Barring an establishment of religion did not mean that the government could not make some concessions to religious beliefs and practice. For example, a religious pacifist would not be drafted into military service.

What does the Establishment Clause tell us about an accommodation to religious beliefs and practices? Clearly, not every accommodation can be viewed as an establishment. For example, not drafting members of a pacifist denomination does not amount to an establishment of the denomination. How all this fits together is complicated. If not every concession is a form of establishment, how should non-religious claims be treated if there are concessions to religious claims? One might see any favouring of the religious claims as a form of establishment. That was not the original understanding, but since then the interpretation has become much more complicated. This is explained thoughtfully in Adenitire's book.

The book similarly deals with the Equal Protection Clause, revealing and analysing developments since the clause was adopted. It then goes on to acknowledge that church autonomy and some other factors may complicate the basic principle that nonreligious beliefs and practices should be treated equally. No matter how far one agrees or disagrees with some of Adenitire's fundamental assumptions, the book contains thoughtful, perceptive analysis.